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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

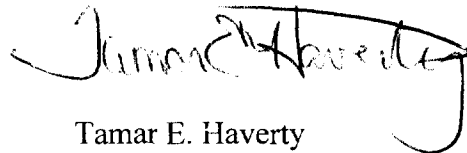
Re: Reply Comments of ACC Long Distance Corp. Submitted in Response to the
FCC's Notice of Proposed Rulemaking in the Matter of Access Charge Reform,
CC Docket No. 96-262

Dear Mr. Caton:

Enclosed for filing, please find an original and sixteen (16) copies of the Reply Comments
of ACC Long Distance Corp. in the above-referenced docket.

Also enclosed is a diskette copy of this filing. If you have any questions, please do not
hesitate to call me at (202) 945-6917.

Sincerely,


Tamar E. Haverty

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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKETED ORIGINAL

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Transport Rate Structure)	CC Docket No. 91-213
and Pricing)	
)	
Usage of the Public Switched)	CC Docket No. 96-263
Network by Information Service)	
and Internet Access Providers)	

REPLY COMMENTS OF
ACC LONG DISTANCE CORP.

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February 14, 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for Local Exchange Carriers)	CC Docket No. 94-1
)	
Transport Rate Structure and Pricing)	CC Docket No. 91-213
)	
Usage of the Public Switched Network by Information Service and Internet Access Providers)	CC Docket No. 96-263
)	

**REPLY COMMENTS OF
ACC LONG DISTANCE CORP.**

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SUMMARY OF REPLY COMMENTS

- Parties overwhelmingly favored the adoption of a prescriptive approach to access reform and presented evidence to show that market forces cannot at this time be relied on to reduce access charges to cost. The FCC should therefore adopt a prescriptive approach to access reform and reduce access charges to cost-based rates comparable to the rates adopted for unbundled network elements.
- The FCC should *not* forbear from regulating services in the interexchange basket, special access, collocated direct trunked transport, and directory assistance. The parties advocating forbearance cannot meet the first prong of the forbearance test (enforcement of regulation is not necessary to ensure that the charges, practices, classifications or regulations in connection with that telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory) on a nationwide basis and forbearance for specific services in specific geographic areas would be more appropriately handled in separate proceedings.
- Although the incumbent LECs persist in their claims of regulatory taking of property, the fact remains that they have not, and cannot, show that they will be unable to earn a reasonable rate of return under the FCC's proposed access charge rules. The FCC must not adopt rules that guarantee incumbents recovery of alleged embedded costs.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Usage of the Public Switched)	CC Docket No. 96-263
Network by Information Service)	
and Internet Access Providers)	

**REPLY COMMENTS OF
ACC LONG DISTANCE CORP.**

ACC Long Distance Corp., by undersigned counsel, hereby submits the following reply comments in response to the published Comments to the Commission's Notice of Proposed Rulemaking (released December 24, 1996) in the above-captioned proceeding.¹

INTRODUCTION AND SUMMARY

In initial Comments submitted to the FCC in response to this Notice, ACC Long Distance Corp. ("ACC"), a subsidiary of ACC Corp., firmly advocated the adoption of a prescriptive, rather

¹*In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and Usage of the Public Switched Network by Information Service and Internet Access Providers*, FCC 96-488, CC Docket Nos. 96-262, 94-1, 91-213, and 96-263, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry (rel. Dec. 24, 1996) ("Notice" or "NPRM").

than a market-based, approach to the critical imperative of reforming the archaic and anticompetitive current structure of access charges by reducing them to forward-looking cost-based rates in short order. As an interexchange carrier (“IXC”) and a new entrant in local markets, ACC is in position of being both a purchaser of access and a collector of access charges, and this perspective has allowed it to take a balanced view of this contentious issue.

ACC is gratified to observe that the initial comments filed in response to the *Notice* demonstrate that the concept of a prescriptive approach to interstate access charge reform enjoys widespread support from widely diverse interests within the telecommunications community. In fact, the concept of the FCC exercising its oversight in this area no longer seems remarkable or controversial, but rather the logical and natural extension of the 1996 Act.² Not only IXCs, but also industry groups, enhanced service providers, and various other service providers (including rural carriers and cooperatives), among others, expressed virtually unanimous support for the Commission's proposal to promulgate pricing reforms and standards, and to enforce these reforms according to a firm timetable. These parties were joined by the vast majority of leading state public utility regulators — especially from those jurisdictions that already have real world experience with intrastate access, who are in the best position to evaluate the costs and public benefits of leaving access charges to the vagaries of today's market forces. Support for prescription was voiced by consumer advocates, and even tentatively by a major LEC.

²*Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996) (“1996 Act”).

ACC also commented to the Commission that **if** the market-based approach was elected over a prescriptive regime, then it was critical for the Commission to properly implement its proposed phases of reform when appropriate levels of local competition had been reached. While ACC objected in principle to the notion of “potential competition” as a set of triggers for Phase I reforms as proposed by the Commission, it is more dismayed at the Comments of the United States Telephone Association (“USTA”), which proposed a set of Phase I reforms that were supported by most commenting LECs. Far from being a initial step in the deregulation of access charges, USTA’s proposed forbearance from regulation of certain services must be delayed until a more concrete attainment of Phase II competitive conditions has been shown.

ACC further argued in its Comments that access prices are reasonable only if they reflect forward-looking economic costs, especially as modeled by the standard of Total Element Long Run Incremental Cost (“TELRIC”), and ACC specifically rejected incumbent LEC claims that access prices should reflect “embedded costs.” ACC takes issue with the persistence of many LECs in their Comments that LECs are entitled to recover the difference between these costs, and that any attempt to deny them such recovery constitutes an unlawful taking.

I. A PRESCRIPTIVE APPROACH TO ACCESS REFORM FOR THE REDUCTION OF ACCESS CHARGES TO COST-BASED RATES IS PLAINLY WARRANTED.

The Comments submitted by parties in this proceeding reflect a remarkable consensus that the prescriptive approach, rather than the market-based approach, should be adopted by the

Commission as the proper way to effect access reform.³ The most succinct argument for a prescriptive approach may have been that of the Missouri Public Service Commission, which pointed out that

a full year after the Act, only the first few competitors have actually begun operation... it is unclear how long it will take before competition could or will develop to the extent that competitive forces can be relied upon to bring access rates in line with access costs, but in some locations it may be years before this occurs...competition for switched access is for the most part embryonic and certainly not sufficiently viable or pervasive enough to allow for the hope of a market based approach.⁴

³See Tennessee Regulatory Authority ("Tenn. Reg. Auth.") Comments at 4 (prescriptive rates might be appropriate until an area is deemed competitive); Washington Utilities and Transportation Commission ("Washington UTC") Comments at 7-8 (advocates use of prescriptive methods in short term or until competition exists in local markets and does not believe that sufficient competitive forces exist for local exchange and access services in Washington State to warrant exclusive reliance on market-based approach); IXC Long Distance ("IXCLD") Comments at 4 (prescriptive approach until incumbents prove competitive local exchange market); Texas Public Utilities Commission ("Texas PUC") Comments at 7-8 (supports use of prescriptive approach with transition to market-based approach when true competition exists, but competition in local exchange markets is not yet present in Texas); Telecommunications Resellers Association ("TRA") Comments at 18 (prescriptive approach recommended); American Telephone & Telegraph ("AT&T") Comments at 4-5 (though wrongly labeled "prescriptive", price cap reinitialization is the approach Commission must take); MCI Comments at 33 (a market-based approach in a market that remains a virtual monopoly is destined to fail); Florida Public Service Commission ("Florida PSC") Comments at 3 (prescriptive approach recommended); Competitive Telecommunications Association ("CompTel") Comments at 13 (access prices will not move to reflect forward costs without Commission prescription); District of Columbia Public Service Commission ("DC PSC") Comments at 2-3 (prescriptive rules should be used as an interim measure until actual competition appears); Excel Comments at 7 (prescriptive approach recommended); Sprint Comments at 49-50 (different but equally prescriptive approach recommended) and Southern New England Telephone ("SONET") Comments at 27 (suggests that a prescriptive approach may be warranted during a transition to a market-based regime).

⁴Missouri Public Service Commission ("Missouri PSC") Comments at 4-5.

Until CLECs are widely ordering and repackaging unbundled network elements ("UNEs"), or there are a significant number of competing facilities-based operators (neither condition of which has yet come to pass), then incumbent LECs simply have no incentive to lower their outrageously high access charges, or even to restructure them.

Incumbent LECs, for their part, predictably recited the party line that only a market-based approach is directed by the 1996 Act. Without exception, they cited the various executed and state-approved interconnection agreements as proof positive that competition already exists in the several states, and will imminently act to push access rates down. ACC contends that pursuing the illusion of a market solution to the problem of high access charges will only perpetuate and indeed even exacerbate the problem.⁵ A market-based solution is unworkable, fundamentally unfair, and will undermine the Commission's (currently stayed) Interconnection Order, which the incumbent LECs have vigorously challenged and upon which this proceeding heavily depends.

To take only one example of market failure which is happening today, ACC has endured repeated delays in obtaining physical collocation at incumbent LECs' facilities, a difficulty it finds it shares with MCI.⁶ To leave as critical a component of telecommunications service as access

⁵ACC concurs with MCI's observation that a market-based approach may encourage inefficient entry in the access market, for as long as access remains above cost, there will be an umbrella under which firms can enter the market to provide access service, even if they are inefficient providers. MCI Comments at 36.

⁶MCI has had extensive problems in its attempt to begin local exchange service in California, among which has been incredible delay and stalling on the part of PACTEL in processing physical collocation requests. In September of 1996 alone, MCI made 72 collocation requests of PACTEL. By January 1, 1997, MCI had only taken delivery on five. MCI Comments at 38.

charges to the whims of entrenched monopolies like the incumbent LECs would be to guarantee that the goals of the 1996 Act will never be reached.

To the incumbent's arguments that a prescriptive approach is unworkable and would be administratively burdensome, ACC counters that the opposite would be true. The Commission has over sixty years of experience in overseeing just such comprehensive price reforms, and it retains the resources and flexibility needed to carry out the 1996 Act's mandates quickly and efficiently. By contrast, a task that the Commission is not well-suited for undertaking is the mammoth project of monitoring a myriad of geographic markets, divining "true competition" by going in search of nebulous "phases" and "triggers" based on day-to-day price fluctuations and contract negotiations. In the long run, it is almost certain that the pursuit of a "market-based" approach will be much more administratively burdensome than price cap reinitialization and clear-cut access charge prescriptions.

II. THE FCC SHOULD NOT GRANT USTA'S FORBEARANCE REQUEST

USTA, recognized as an important industry voice of the incumbents, makes the startling proposal that services in the interexchange basket, special access, collocated direct trunked transport and directory assistance are already subject to sufficient competition and therefore meet the criteria in Section 10(a) of the 1996 Act which requires the Commission to forbear from regulation, and that therefore these services should be forborne in the Commission's proposed Phase I of the market-based alternative.⁷ By itself this proposal is inappropriate; the fact that USTA combines it with its

⁷USTA Comments at 35.

maintaining that the mere existence of a signed and state-approved interconnection agreement is sufficient to trigger a Phase I level of competition makes it particularly objectionable.⁸

The parties advocating forbearance⁹ cannot meet the first prong of the forbearance test¹⁰ on a nationwide basis. For example, the presence of competitive alternatives for services such as transport and special access service varies widely by locality:

California has experienced significant competition for transport services in recent years, but only in particular geographic areas. Only in those areas does high-capacity access service warrant increased LEC deregulation.¹¹

Sprint also provided evidence showing that alternative access providers have made few inroads in the access market despite their presence in the market for almost a decade.¹² Therefore, forbearance requests for specific services in specific geographic areas would be more appropriately handled in separate proceedings.

⁸GTE was but one incumbent which liked to cite approved interconnection agreements as “evidence” of the existence of competition. GTE neglected to add that it has appealed *nearly every* arbitration decision to date. MCI Comments at 34; CompTel Comments at 10.

⁹*See, e.g.*, GTE Comments at 44; PacTel Comments at 28; Southwestern Bell at 19; USTA Comments at 35-48; US West Comments at 42.

¹⁰The first prong requires a determination by the Commission that “enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.” 47 U.S.C. § 10(a)(1).

¹¹California PUC Comments at 10-11. *See also*, Florida PSC Comments at 7.

¹²Sprint Comments at 37-38 (alternative access providers received less than nine cents of every special access dollar spent by Sprint in 1996).

ACC's difficulties in obtaining collocation with incumbent LECs has been discussed above, and it is certainly true that incumbents have proved all too ready to delay and hinder the provision of the other special services as well. ACC urges the Commission that should it elect to adopt a market-based approach to access charge reform, it should clearly indicate that it will not forbear from deregulating certain services until both Phase I and Phase II triggers have been achieved. Moreover, these triggers must be subject to rigorous quantifiable verification, as suggested by several commentators.¹³

III. THE FCC SHOULD NOT ADOPT RULES THAT GUARANTEE INCUMBENTS' RECOVERY OF ALLEGED EMBEDDED COSTS.

ACC insisted in its Comments that the prices for access and interconnection should be based on the same standard, Total Element Long Run Incremental Cost ("TELRIC"). More than one competitor agreed, even to the point of favoring TELRIC over other potential cost models. If access prices are substantially above cost, it will provide incentives for IXCs to bypass the incumbent's access charges by interconnecting with the incumbent and purchasing UNEs to substitute for the access service. This inefficient solution is why the Commission must immediately adopt cost-based rates for access charges, based on either TELRIC or TSLRIC.¹⁴

¹³See, e.g., California Public Utilities Commission Comments at 11 (number of unbundled loops provisioned and number of cross-connects should be factors considered when evaluating competition).

¹⁴E.g., California PUC Comments at 9 (TSLRIC with modifications); MCI Comments at 18 (TELRIC with proxy cost models); AT&T Comments at 19 (either TELRIC or TSLRIC); IXCLD Comments at 2-3 (TELRIC).

The Commission must reject the ministrations of the incumbents that they must have a method for recovering their “embedded costs.” Contrary to incumbents’ assertions, TELRIC or TSLRIC pricing of access charges does not amount to an unconstitutional taking. At least one court has found that a takings challenge to a rate order which excluded “part of [an] original investment from the rate base” was without merit.¹⁵ One commentator noted that in other competitive industries, firms routinely write off plant made obsolete by more efficient competition; other incumbent LECs accept a certain level of risk under a price cap regime.¹⁶ If the Commission wishes to introduce competition in the access market and reduce access charges to cost, it should not guarantee incumbents recovery of their embedded access costs.

¹⁵*Illinois Bell Tel. Co. v. FCC*, 988 F.2d 1254, 1263 (D.C. Cir. 1993) (the test to be applied is whether the end result meets the *Hope* standards: attraction of capital and compensation for risk).

¹⁶MCI Comments at 30; Florida PSC Comments at 12.

IV. THE COMMISSION SHOULD NOT REGULATE CLEC TERMINATING ACCESS

In its Comments, ACC strongly urged that CLEC terminating access charges should not be subject to regulatory oversight. One of the commentators, AT&T, proposed that the Commission mandate that CLEC terminating access charges must be set at or lower than the local incumbent ILEC's terminating access charges (assuming the latter is set at long-run incremental costs), and, that to the extent CLECs charge higher rates, the excess must be recovered from the end-user.¹⁷ ACC objects to this approach for a number of reasons. In the long-term, economic incentives will force CLECs to price terminating access at or below their incumbent LEC competitors. For example, if CLECs price terminating access above cost, but interconnection and unbundled network elements are priced at cost, in the long run it will be more economical for the long distance carrier to set up its own CLEC and pay cost-based interconnection rates rather than inflated access rates, a process described previously. The market will eventually yield cost-based terminating access rates, therefore the Commission should not impose such a regulatory requirements on CLECs. Moreover, such a shift to the end-user would be against public policy and would be administratively burdensome.

¹⁷AT&T Comments at 63.

CONCLUSION

Although competitive market forces might help drive access charges to costs at some time in the future, today's "market" for exchange access continues to be dominated by the incumbent LECs. Therefore, at this time, the FCC cannot rely on market forces and must therefore move quickly to reduce access charges to cost.

Respectfully submitted,



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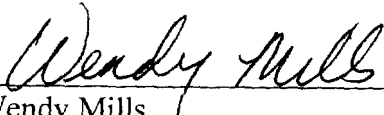
CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 1997, a copy of the foregoing
Comments of ACC Long Distance Corp. were served via hand delivery on the following:

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Wendy Mills